

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 24 NOV 2005

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Applicant's or agent's file reference P59268L-WO	<b>FOR FURTHER ACTION</b>		See Form PCT/PEA/416
International application No. PCT/EP2004/009251	International filing date (day/month/year) 17.08.2004	Priority date (day/month/year) 18.08.2003	
International Patent Classification (IPC) or national classification and IPC B65D75/58			
Applicant NESTEC S.A. et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> <i>(sent to the applicant and to the International Bureau)</i> a total of 4 sheets, as follows:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</li> <li><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</li> </ul> <p>b. <input type="checkbox"/> <i>(sent to the International Bureau only)</i> a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Box No. I Basis of the opinion</li> <li><input type="checkbox"/> Box No. II Priority</li> <li><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</li> <li><input type="checkbox"/> Box No. IV Lack of unity of invention</li> <li><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</li> <li><input type="checkbox"/> Box No. VI Certain documents cited</li> <li><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</li> <li><input type="checkbox"/> Box No. VIII Certain observations on the international application</li> </ul>			
Date of submission of the demand 10.03.2005	Date of completion of this report 23.11.2005		
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Fitterer, J Telephone No. +49 89 2399-7916		



# INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.  
PCT/EP2004/009251

## Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
  - This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
    - international search (under Rules 12.3 and 23.1(b))
    - publication of the international application (under Rule 12.4)
    - international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

### Description, Pages

1-8 as originally filed

### Claims, Numbers

1-22 filed with telefax on 20.06.2005

### Drawings, Sheets

1/3-3/3 as originally filed

- a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3.  The amendments have resulted in the cancellation of:
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):
4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2004/009251

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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**1. Statement**

Novelty (N)	Yes: Claims	6,9-11,16,22
	No: Claims	1-5,7,8,12-15,17-21
Inventive step (IS)	Yes: Claims	
	No: Claims	1-22
Industrial applicability (IA)	Yes: Claims	1-22
	No: Claims	

**2. Citations and explanations (Rule 70.7):**

**see separate sheet**

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**Box No. VII Certain defects in the international application**

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The following defects in the form or contents of the international application have been noted:

**see separate sheet**

**Re Item V**

**Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1 Reference is made to the following documents:

- D1: DE 26 09 520 A (MITSUBISHI PETROCHEMICAL CO) 16 September 1976
- D2: DE 89 07 723 U (HOECHST AG) 10 August 1989
- D3: FR-A-2 832 698 (SOPLARIL SA) 30 May 2003
- D4: DE 21 17 980 A (IMPERIAL CHEMICAL INDUSTRIES) 19 October 1972
- D5: US-A-4 598 826 (SHINBACH MADELINE P) 8 July 1986

2 INDEPENDENT CLAIMS

The independent claims do not meet the criteria of Article 33(1) PCT, because the subject-matter of these claims is not new in the sense of Article 33(2) PCT.

- 2.1 Document D1 discloses (cf. figures 1, 2; pages 3-6) a flexible container (2) comprising opposed front and back walls sealed together proximate to their edges (2a) to define an internal space, a pair of tear-limiting strips (3, 4) applied to a surface of each wall so that the strips coincide substantially on the opposed walls, defining corresponding tear paths (5) along each surface, wherein the strips of each pair are spaced about 0,5 mm - 3 mm apart, and wherein the strips are about 5 mm to about 20 mm in breadth (cf. claim 1).
- 2.2 Document D1 implicitly discloses (cf. figures 1, 2; pages 3-6) a method of forming a wall material for a tearable flexible container (2) comprising the steps of providing a flexible film for forming a wall of the container (2), providing a tear barrier element having substantially greater tear resistance than the wall film, locating the element on the film to define a tear path (5) thereon, and fixing the element to the film, wherein the tear barrier element comprises a pair of tear-limiting strips (3, 4) which are about 5 mm to about 20 mm in breadth and wherein the strips (3, 4) of each pair are spaced about 0,5 mm - 3 mm apart (cf. claim 17).
- 2.3 Document D1 implicitly discloses (cf. figures 1, 2; pages 3-6) a method of manufacturing a sealable bag comprising the steps of providing a flexible film and forming it into a container (2) defining an internal space bounded by respective

front and back walls, and applying a pair of tear barrier strips (3, 4) to the walls to define a bounded tear path (5) on each of the front and back walls, wherein the strips (3, 4) are located to be spaced about 0,5 mm - 3 mm apart and wherein the strips (3, 4) are about 5 mm to about 20 mm in breadth (cf. claim 18).

- 2.4 Document D1 implicitly discloses (cf. figures 1, 2; pages 3-6) a method of manufacturing a flexible walled container (2) comprising the steps of providing first and second films, providing tear barrier material in strip form, applying the tear barrier material in paired strips (3, 4) to each film so as to define a substantially coinciding tear path (5) on each film and arranging the films in opposition to form a container (2) comprising substantially coincident tear paths (5) on each wall, further comprising applying the paired strips (3, 4) to be spaced about 0,5 mm - 3 mm apart, wherein the strips are about 5 mm to about 20 mm in breadth (cf. claim 20).
- 2.5 Claims 1, 17, 18, 20 define that the strips of each pair are spaced about 1 mm - 2 mm apart and the strips are about 1 mm to about 5 mm in breadth. However, D1 destroys the novelty of the claimed subject-matter, the reasons being as follows:

With respect to the space between the pair of strips (sub-range selected from a broader numerical range) the selected range is an arbitrary specimen of the prior art, i.e. a mere embodiment of the prior art, but not another invention (purposive selection, new teaching). Furthermore, the selected sub-range cannot be considered narrow compared to the known range. With respect to the breadth of the strips (overlapping range) novelty is destroyed by the explicitly mentioned end-point "5 mm".

Moreover, the person skilled in the art is aware of the following well known effects related to the configuration of the pair of strips: The smaller the distance between the pair of strips the better the determination of a straight tear line (see also D1, page 5, last 3 lines), however, the more difficult and thus the more expensive the manufacturing process. Furthermore, the larger the breadth of the strips the better the reinforcing effect of the walls, however, the more material is needed. A particular selection of a range of values of the distance between the strips and the breadth of the strips results in predetermined effects in the context of the above mentioned dependencies. However, the claimed selections are not connected to any particular or surprising technical effects. The skilled person would choose values according to the claimed selection, without the exercise of inventive skill, in

order to reach a certain compromise between the quality of the tear line, the stability of the container, the usage of material and the resulting manufacturing costs.

### **3 DEPENDENT CLAIMS**

Dependent claims 2-16, 19, 21, 22 do not contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and 33(3) PCT), the reasons being as follows:

Claims 2, 6: Cf. D1 (page 5, last 3 lines) and D2 (claim 4), respectively. Reference is made to paragraph 2.5, see above.

The additional features of claims 3-5, 7, 8, 12-15, 19, 21 are known from D1 (cf. figures 1, 2; pages 3-6). Concerning claim 15 it is not clear which "end of a wall" is meant. To show another possibility which is different from the configuration according to D1 (figure 5), furthermore D5 is cited, with reference to figures 1-4.

The additional features of claims 9, 11, 16 are known from D3 (cf. claim 1 and figures 12-16). The additional feature of claim 10 consists merely in the association of known features (locating the strips on an external / internal wall surface; see claims 8, 9) functioning in their normal way and not producing any non-obvious working inter-relationship, thus not involving an inventive step.

The additional feature of claim 22 is known from D4 (cf. claim 4).

#### **Re Item VII**

#### **Certain defects in the international application**

The requirements of Rule 6.2(b) PCT (reference signs) and Rule 6.3(b) PCT (two-part form) are not met.